

Advisory Opinion

IECDB AO 2007-06

June 28, 2007

Todd Whipple
Project Manager
Fox Engineering Associates, Inc.
1601 Golden Aspen Drive, Suite 103
Ames, Iowa 50010

Dear Mr. Whipple:

This opinion is in response to your letter of October 16, 2006, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board’s jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

Your opinion request does not include, nor does it require, a factual statement.

QUESTION:

Does the “gift law” in Iowa Code section 68B.22 apply to 28E entities?

OPINION:

Iowa Code section 68B.22 prohibits a “public official, public employee, or candidate, or that person’s immediate family member” from receiving gifts except under certain circumstances. Your question turns on the issue of whether or not a 28E entity is a governmental body triggering the members of the 28E governing boards and the individuals employed by 28E entities to be “public officials” or “public employees.”

It appears that entities created under Iowa Code chapter 28E have historically not been considered to be governmental bodies. Rather, they are treated as “quasi-governmental” bodies. Several laws that apply to governmental bodies do not automatically apply to 28E entities unless a specific statutory mandate aimed at 28E entities is passed.

Therefore, we do not believe that 28E entities are governmental bodies and that individuals associated with the 28E entities are automatically subject to the ethics laws. In addition, there has been no statutory mandate that Iowa Code chapter 68B or Iowa Code section 68B.22 in particular apply to 28E entities.

Thus, members of the governing bodies of 28E entities and employees of a 28E entity are not “public officials” or “public employees” by merely serving or being employed by 28E entities. As such, they would not be subject to the prohibitions on the receipt of gifts as set out in Iowa Code section 68B.22.

In closing, we do note that in several situations members of a governmental body do serve on the board of a 28E entity.¹ While the gift law provisions in Iowa Code section 68B.22 would not apply due to their service on the 28E entity board itself, the gift law would still apply in their capacities as public officials or public employees of their original governmental bodies.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹For example elected officials at the county and city level will serve on the board of directors for a 28E entity.